

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRP ENTERTAINMENT, LLC,,

Plaintiff,

v.

BC ENTERTAINMENT, INC., *et al.*,

Defendants.

Case No. 2:08-cv-0579-LDG (CWH)

ORDER

This matter is before the Court on Plaintiff TRP Entertainment, LLC's Motion to Strike Defendant Barrie Cunningham's Answer to Complaint and for Dispositive Sanctions. Also before the Court is TRP's *Ex Parte* (with Notice) Motion to Continue Trial (#107). TRP orally moved to strike Cunningham's Answer, and for default judgment, at a hearing held by the Magistrate Judge on an Order to Show Cause. Cunningham neither attended that hearing nor submitted a written brief, though he had been ordered to address why the Court should not impose sanctions, including the entry of default, for his failure to appear at a scheduled settlement conference and his failure to comply with court orders.

The Magistrate Judge issued a Report and Recommendation (#103) in response to TRP's motion for sanctions. The Magistrate Judge recommends that TRP's motion be granted, that Cunningham's answer be stricken, and that default judgment be entered

1 against him. The Magistrate Judge also notified Cunningham that, pursuant to Local Rule
2 IB 3-2, any objection to the Report and Recommendation must be in writing and must be
3 filed within fourteen days. Cunningham has not filed a written objection to the Report and
4 Recommendation.

5 The Court has carefully reviewed the Report and Recommendation, including its
6 detailed account of Cunningham's conduct in failing to submit a confidential settlement
7 conference statement, in failing to attend the scheduled settlement conference, and
8 Cunningham's communications affirmatively stating he would not attend the settlement
9 conference. As a result, the Magistrate Judge entered an Order to Show Cause, requiring
10 Cunningham to both file a written brief regarding his refusal to attend the settlement
11 conference and to attend a hearing on the Show Cause Order. Cunningham neither filed
12 the required written brief nor attended the Show Cause hearing. The Court finds that the
13 Magistrate Judge's report of Cunningham's conduct is accurate, and that the Magistrate
14 Judge's reasoning supporting his recommendation is thorough and correct. Finally, though
15 the Magistrate Judge plainly recommends that Cunningham's Answer be stricken and that
16 default judgment be entered against him, Cunningham has not objected. Accordingly, the
17 Court will adopt the Magistrate Judge's Report and will follow his recommendation to strike
18 Cunningham's Answer and to enter default judgment against him.

19 Trial in this matter has been calendared to commence July 22, 2013. TRP has
20 moved to continue that trial date pending this Court's consideration of the Report and
21 Recommendation. TRP correctly notes that, in light of the Magistrate Judge's
22 recommendation, the need for trial would be obviated if the Court were to adopt the
23 recommendation. Thus, requiring TRP to go forward with trial preparations would result in
24 needless expense if this Court were to ultimately adopt the recommendation. As the Court
25 will adopt the Magistrate Judge's recommendation, TRP's motion to continue trial has been
26 rendered moot.

1 Therefore,

2 THE COURT **ADOPTS** the Report and Recommendation (#103) in its entirety.

3 THE COURT **ORDERS** that TRP Entertainment, LLC's Motion to Strike Defendant
4 Barrie Cunningham's Answer to Complaint and for Dispositive Sanctions is GRANTED;

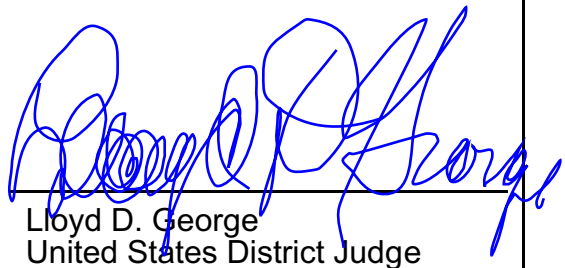
5 THE COURT FURTHER **ORDERS** that Defendant Barrie Cunningham's Answer to
6 Complaint is STRICKEN;

7 THE COURT FURTHER **ORDERS** that TRP Entertainment, LLC shall prepare for
8 the Court a proposed Default Judgment to be entered by the Court against Defendant
9 Barrie Cunningham, and shall submit such proposed Default Judgment within fourteen
10 days of this Order.

11 THE COURT FURTHER **ORDERS** that TRP Entertainment, LLC's Ex Parte Motion
12 to Continue Trial (#107) is DENIED as moot;

13 THE COURT FURTHER **ORDERS** that the trial set to commence on July 22, 2013,
14 is hereby VACATED.

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16 DATED this 11 day of July, 2013.

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19 Lloyd D. George
20 United States District Judge
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